

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
AMARILLO DIVISION**

TERRY MORA, et al, individuals,

8

Plaintiffs,

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VS.

CASE NO. 2-08CV-100-J

**ALLSUP'S CONVENIENCE STORES,
INC., a New Mexico Corporation,
LONNIE D. ALLSUP, an individual and
BARBARA J. ALLSUP, an individual.**

88

Defendants.

JURY TRIAL DEMANDED

PLAINTIFFS' SUPPLEMENT TO MOTION FOR ATTORNEYS FEES

Come Now, Terry Mora, Arlene Denise Stamps and Sandra Ford, plaintiffs' in the above entitled and numbered cause of action, and file this their Supplement to Plaintiffs Application for Attorneys Fees with Appendix (Dkt.#74 & 75) filed October 29, 2010. Thereafter the defendants objected to plaintiffs' application and, among other challenges, asserted that plaintiffs counsels' claimed rate of \$350.00 per hour is excessive (Dkt.#76). Thereafter plaintiffs' filed their Reply to Defendants Response to the Fee Application with a supporting Appendix (Dkt.#78 &79). Plaintiffs herewith supplement their fee application with the "Affidavit of Kelly Utsinger" of the Underwood Firm dated December 9, 2010, which states that \$350.00 per hour is reasonable in this type case. That affidavit is hereto attached as Exhibit "A" and incorporated for all purposes by reference.

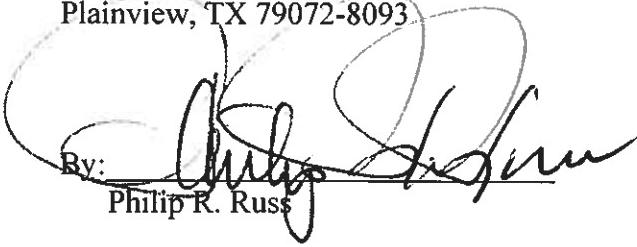
Dated and signed this 9th day of December 2010.

Respectfully submitted,

Law Offices of Philip R. Russ
Philip R. Russ, SB#17406000
2700 S. Western St., Ste. 1200
Amarillo, TX 79109
806-358-9293
806-358-9296-fax

and

Laney & Myatt
Mark W. Laney, SB#11892500
620 Ash St.
Plainview, TX 79072-8093

By: 
Philip R. Russ

Attorneys for the Plaintiffs

Certificate of Service

I do hereby certify that on the 9th day of December, 2010, the foregoing instrument was served on opposing counsel of record by ECF electronic filing as follows:

Michael W. Fox
Robbie Chance
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
301 Congress Avenue, Suite 1250
Austin, TX 78701


Philip R. Russ

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

TERRY MORA, et al, individuals §
§
Plaintiffs, §
§
V. § CASE NO. 2-08-CV-100-J
§
ALLSUP's CONVENIENCE STORES, §
INC., a New Mexico Corporation §
LONNIE D. ALLSUP, an individual and §
BARPARA J. ALLSUP, an individual, §
§
Defendants. §

AFFIDAVIT OF KELLY UTINGER

STATE OF TEXAS §
§
COUNTY OF POTTER §

ON THIS DAY, BEFORE ME, the undersigned Notary Public, personally appeared Kelly Utsinger, known to me, who, on oath, stated:

1. "I am over 21 years of age and qualified in all respects to make this Affidavit. I am fully competent to testify to the matters stated herein. I have personal knowledge of the facts stated herein and swear that they are true and correct.

2. "I graduated from Texas Tech Law School in 1979. After having served one year as a briefing attorney for the Honorable Charles Reynolds, Chief Justice of the 7th Court of Civil Appeals, I was hired by Underwood, Wilson, Berry, Stein & Johnson, P.C. ("Underwood") in the fall of 1980. I have been licensed to practice law in the State of Texas for 31 years. During that period, I have devoted my practice almost exclusively to civil trial and appellate work in West Texas and the Texas Panhandle. I currently serve as Underwood's Vice President and have been a member of the firm's management committee

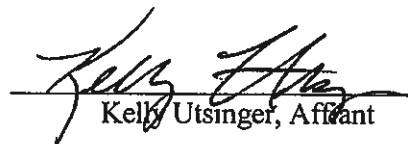
for approximately 11 years. In those capacities, I have been actively involved in setting the billing rates for Underwood lawyers and have investigated hourly rates charged in both the Texas Panhandle and throughout the state in order to determine the reasonable hourly rates for Underwood's lawyers and paralegals.

3. "My familiarity with reasonable, customary and necessary fees for attorneys' services provided in West Texas and across the state is also based on my trial and appellate experience. Since joining Underwood in 1980, I have served as lead counsel and tried to a conclusion at least 13 cases in federal court, and more than 20 cases in state court. I have also been counsel in 31 published state and federal appellate opinions. My license to practice law in Texas has been in good standing since it was issued in November 1979 and I am licensed to practice in the United States District Courts for the Northern and Eastern Districts, the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court.

4. "I routinely provide advice on employment matters, including issues arising under the Fair Labor Standards Act (FLSA), for major employers in the Amarillo area. I have served as trial counsel in multiple collective action cases, settled many and tried some of those cases to conclusion. These experiences provide me with an understanding of the complexity of FLSA collection actions and the importance of skilled trial counsel.

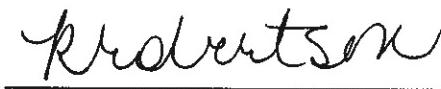
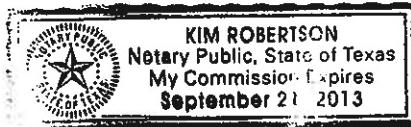
5. "In 2009, my published billing rate was \$325 per hour. Mr. Russ is ten years my senior. I am familiar with his practice and am aware that he has handled more FLSA matters than have I. In my opinion his rate of \$350 per hour is reasonable in light of his experience and the complexity of FLSA collective action cases.

6. "Based upon his experience in trying collective action cases and my familiarity with the complexity of these cases and the rates in the Amarillo area for trial lawyers of his talent, I believe that Mr. Russ's \$350 per hour rate is reasonable.



Kelly Utsinger, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on the 9th day of December, 2010.



Robertson

Notary Public, State of Texas